

## Title 210 – NEBRASKA DEPARTMENT OF INSURANCE

### Chapter 76 – VIATICAL SETTLEMENTS

#### **001. Authority**

This regulation is adopted by the director pursuant to the authority in Neb. Rev. Stat. § 44-1114.

#### **002. Definitions**

In addition to the definitions in Neb. Rev. Stat. § 44-1102, the following definitions apply to this regulation:

- (002.01) “Insured” means the person covered under the policy being considered for viatication.
- (002.02) “Life expectancy” means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.
- (002.03) “Net death benefit” means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.
- (002.04) “Patient identifying information” means an insured’s address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

#### **003. License Requirements**

- (003.01) The Director may require an individual applying for a viatical settlement broker license to pass a written examination designated by the Department testing the knowledge of the individual concerning viatical settlements, the duties and responsibilities of a viatical settlement broker, and the laws, rules and regulations applicable to viatical settlement sales in Nebraska.
- (003.02) In addition to the information required in Neb. Rev. Stat. § 44-1103, the director may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider or viatical settlement broker complies with the requirements of Neb. Rev. Stat. § 44-1103.

(003.03) The application for a viatical settlement broker shall be accompanied by a fee of \$40.00. The broker license may be renewed by payment of \$40.00 and a current copy of a letter of good standing obtained from the filing officer of the applicant's state of domicile. The application for a viatical settlement provider shall be accompanied by a fee of \$1,000. The provider license may be renewed annually by payment of \$100 and a current copy of a letter of good standing from the state of domicile. If a viatical settlement provider or viatical settlement broker fails to pay the renewal fee within the time prescribed, or a viatical settlement provider fails to submit the reports required in Section 006 of this regulation, such nonpayment or failure to submit the required reports shall result in expiration of the license. If a viatical settlement provider has, at the time of renewal, viatical settlements where the insured has not died, it shall do one of the following:

(003.03A) Renew or maintain its current license status until the earlier of the following events:

(003.03A(1)) The date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or

(003.03A(2)) The date that the last insured covered by viatical settlement transaction has died.

(003.03B) Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the broker who received commissions from the viatical settlement, if applicable, or any other viatical settlement provider or broker licensed in this state to make all inquiries to the viator, or the viator's designee, regarding health status of the viator or any other matters.

(003.04) An individual licensed as a viatical settlement broker or authorized to act under a license issued to a licensed entity as a viatical settlement broker shall complete fifteen (15) hours of department-approved continuing education during each continuing education biennium.

(003.04A) The required continuing education hours shall include a minimum of:

(a) Twelve (12) hours in life insurance;

(b) Three (3) hours in ethics.

(003.04B) Pursuant to Neb. Rev. Stat. § 44-1103(8), a life insurance producer who is operating as a viatical settlement broker pursuant to

Neb. Rev. Stat. § 44-1103(1) shall be exempt from the requirements of section 003.04.

- (003.04C) Each continuing education biennium shall begin at the end of the licensee's birth month when licensee's age ends in an even number.
- (003.04D) The license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with the procedures set forth in Neb. Rev. Stat. § 44-4054(6) shall terminate and shall be promptly surrendered to the director without demand.
- (003.05) A viatical settlement broker or viatical settlement provider shall file with the director, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility. Evidence of financial responsibility shall be in the form of:
  - (003.05A) A surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount of \$250,000; or
  - (003.05B) A deposit of cash, certificates of deposit, or securities, or any combination thereof, in the amount of \$250,000.
- (003.06) The license issued to a viatical settlement provider or viatical settlement broker shall be a limited license that allows it to operate only within the scope of its license.

#### **004. Appointments**

- (004.01) A viatical settlement broker shall not act as an agent of a viatical settlement provider unless the viatical settlement broker becomes an appointed agent of that provider. A viatical settlement broker who is not acting as a viatical settlement broker of a provider is not required to be appointed.
- (004.02) To appoint a viatical settlement broker as its agent, the appointing provider shall file, in a format approved by the director, a notice of appointment within fifteen (15) days from the date the agency contract is executed or the first viatical settlement contract is negotiated on behalf of the provider.
- (004.03) Upon receipt of the notice of appointment, the director shall verify within a reasonable time not to exceed thirty (30) days that the viatical settlement broker is determined to be eligible for appointment. If the viatical

settlement broker is determined to be ineligible for appointment, the director shall notify the provider within ten (10) days of its determination.

(004.04) A provider shall pay an annual appointment fee, in the amount and method of payment set forth in Neb. Rev. Stat. § 44-4064(1)(b) not to exceed \$10.00, for each viatical settlement broker appointed by the provider.

(004.05) A licensed life insurance producer acting as a viatical settlement broker pursuant to Neb. Rev. Stat. § 44-1103(1) who is an appointed agent of a viatical settlement provider under the Insurance Producer's Licensing Act does not need to be separately appointed with that viatical settlement provider under this section.

#### **005. Standards for Evaluation of Reasonable Payments for Terminally or Chronically Ill Insureds**

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the return for viaticating a policy shall be no less than the following payouts for insureds who are terminally or chronically ill:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	[80%]
At least 6 but less than 12 months	[70%]
At least 12 but less than 18 months	[65%]
At least 18 but less than 24 months	[60%]
Twenty-four months or more	[50%]

The percentage may be reduced by [5%] for viaticating a policy written by an insurer rated less than the highest [4] categories by A.M. Best, or a comparable rating by another rating agency.

#### **006. Reporting Requirement**

(006.01) On or before March 1 of each calendar year, each viatical settlement provider licensed in this state shall submit the following related to the licensee's activities for the previous calendar year:

(006.01A) For viatical settlements contracted during reporting period:

(006.01A(1)) A report of the viatical settlement transactions related to Nebraska viators, which shall be submitted on Form VSP 001 (Appendix B);

- (006.01A(2)) A report of the individual mortality of Nebraska insureds, which shall be submitted on Form VSP 002 (Appendix C);
- (006.01A(3)) A certification of the information contained in the reports, which shall be submitted on Form VSP 003 (Appendix D) and shall be filed with the reports.
- (006.02) Each viatical settlement provider shall remit an annual statement filing fee of \$200.00 in accordance with Neb. Rev. Stat. § 44-114(7).

## **007. General Rules**

- (007.01) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.
- (007.02) Payment of the proceeds of a viatical settlement pursuant to Neb. Rev. Stat. § 44-1109(4) shall be by means of wire transfer to the account of the viator or by certified check or cashier's check.
- (007.03) Payment of the proceeds of the viator pursuant to a viatical settlement shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.
- (007.04) A viatical settlement provider or viatical settlement broker shall not discriminate in the making or solicitation of viatical settlements or discriminate between viators with dependents and without dependents.
- (007.05) A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement broker, with respect to the viatical settlement.
- (007.06) If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following provisions;

- (007.06A) A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company.
- (007.06B) A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either;
  - (007.06B(1)) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or
  - (007.06B(2)) Send a copy of the instrument sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and
- (007.06C) A provision that apportions the premiums to be paid by the viatical settlement provider and the viator. It is permissible for the viatical settlement contract to specify that all premiums shall be paid by the viatical settlement provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.
- (007.07) In all cases where the insured is a minor child, disclosures to and permission of a parent satisfy the requirements of Neb. Rev. Stat. § 44-1108 and this regulation.

## **008. Prohibited Practices**

- (008.01) A viatical settlement provider or viatical settlement broker shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider, or viatical settlement broker is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five (5) business days after receiving notice of the subpoena.
- (008.02) A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement.

- (008.03) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.
- (008.04) A viatical settlement provider shall not use a longer life expectancy than is reasonable in order to reduce the pay-out to the viator.

**009. Insurance Company Practices**

- (009.01) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within thirty (30) calendar days of the date a request is received, including the insurer's intent whether to pursue an additional investigation regarding possible fraud or the validity of the insurance contract, subject to the following conditions:
  - (009.01A) A current authorization consistent with applicable law, signed by the policyowner or certificateholder, accompanies the request;
  - (009.01B) In the case of an individual policy or group insurance coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of a form substantially similar to Appendix A, which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form.
- (009.02) Nothing in this section shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.
- (009.03) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this section in excess of any usual and customary charges to contractholders, certificateholders or insureds for similar services.
- (009.04) The life insurance company may send an acknowledgement of receipt of the request for verification of coverage to the policyowner or certificateholder and, where the policy owner or certificate owner is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

**010. Severability.**

If any section or portion of a section of this chapter, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this chapter, or the applicability of such provision to other persons shall not be affected thereby.



## APPENDIX A

### VERIFICATION OF COVERAGE FOR LIFE INSURANCE POLICIES

SUBMITTED TO: \_\_\_\_\_ NAIC # \_\_\_\_\_  
Name of Insurance Company

POLICY NUMBER: \_\_\_\_\_

SUBMITTED FROM: \_\_\_\_\_  
Name of Viatical Settlement Broker/Provider

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

CONTACT: \_\_\_\_\_ TITLE: \_\_\_\_\_

IF INFORMATION IS CORRECT, INSURER REPRESENTATIVE MAY PLACE A CHECKMARK IN THE BOX. OTHERWISE PROVIDE CORRECTED INFORMATION THROUGHOUT THIS FORM. AN ASTERISK INDICATES INFORMATION THE VIATICAL SETTLEMENT PROVIDER/BROKER MUST PROVIDE.

#### POLICY OWNER'S AND INSURED'S INFORMATION

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Owner's name	*	
Address	*	
City, state, ZIP code	*	
Tax ID or social security number	*	
Insured's name	*	
Insured's date of birth	*	
Second insured's name (if applicable)	*	
Second insured's date of birth (if applicable)	*	

I hereby consent by my signature below to release of information requested by this form by the insurance company to the viatical settlement broker/provider.

\_\_\_\_\_  
Signature of policy owner

\_\_\_\_\_  
Date signed

IS THE POLICY IN FORCE? \_\_\_\_\_YES \_\_\_\_\_NO

IF NO, SIGN, AND DATE ON PAGE 4 AND RETURN TO THE VIATICAL SETTLEMENT  
BROKER OR PROVIDER THAT SUBMITTED THE VERIFICATION OF COVERAGE.

**POLICY TYPE, RIDERS & OPTIONS:**

\* \_\_\_\_\_TERM \_\_\_\_\_WHOLE LIFE \_\_\_\_\_UNIVERSAL LIFE \_\_\_\_\_VARIABLE LIFE

If a question is not applicable to the type of policy, write N/A in the column.

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Original issue date	*	
Maturity date of policy		
State of issue	*	
Does the policy have an irrevocable beneficiary?	*	
Is the policy currently assigned?	*	
Was the policy ever converted or reinstated?		
Is the policy in the contestability period?	*	
Is the policy in the suicide period?	*	
Please list all riders and indicate if any are in the contestable or suicide period.	*	

### POLICY VALUES

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
<b>Policy values as of (insert date)</b>		
<b>Current face amount of policy</b>	*	
<b>Amount of accumulated dividends</b>		
<b>Current face amount of riders</b>		
<b>Amount of any outstanding loans</b>	*	
<b>Amount of outstanding interest on policy loans</b>		
<b>Current net death benefit</b>	*	
<b>Current account value</b>	*	
<b>Current cash surrender value</b>	*	
<b>Is policy participating?</b>	*	
<b>If yes, what is the current dividend option?</b>		

### PREMIUM INFORMATION

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
<b>Current payment mode</b>	*	
<b>Current modal premium</b>	*	
<b>Date last premium paid</b>	*	
<b>Date next premium due</b>	*	
<b>Current monthly cost of insurance as of (insert date)</b>		
<b>Date of last cost of insurance deduction</b>		

### TO BE COMPLETED BY VIATICAL SETTLEMENT BROKER/PROVIDER

The information submitted for verification by the viatical settlement broker/provider is correct and accurate to the best of my knowledge and has been obtained through the policy owner and/or insured.

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Signature

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Printed Name

**TO BE COMPLETED BY INSURANCE COMPANY**

The information provided by verification by the insurance company is correct and accurate to the best of my knowledge as of \_\_\_\_\_(date).

Insurance company: \_\_\_\_\_NAIC #\_\_\_\_\_

Printed name: \_\_\_\_\_Title: \_\_\_\_\_

Telephone number: \_\_\_\_\_Fax number: \_\_\_\_\_

Signature: \_\_\_\_\_

*Please provide information about where the forms listed below should be submitted for processing.*

Name: \_\_\_\_\_Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Overnight Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Telephone number: \_\_\_\_\_Fax number: \_\_\_\_\_

**FORMS REQUEST**

Please provide the forms checked below:

- ☐ Absolute Assignment/Change of Ownership/Viatical Assignment
- ☐ Change of Beneficiary
- ☐ Release of Irrevocable Beneficiary (if applicable)
- ☐ Waiver of Premium Claim Form
- ☐ Disability Waiver of Premium Approval Letter
- ☐ Release of Assignment
- ☐ Change of Death Benefit Option Form (if UL)
- ☐ Allocation Change Form (if Variable)
- ☐ Annual Report
- ☐ Current In Force Illustration

## APPENDIX B

## Viatical Settlement Provider Report

Calendar year

Viatical Settlement Provider's  
Name

Nebraska Transactions Only

20\_\_\_\_\_

[illegible]

Initials of Preparer: \_\_\_\_\_

VSP 001

## Viatical Settlement Provider Report Nebraska Insureds Only Instructions

1. List the settlement number, case number or unique identifying number used to identify the specific viatical settlement transaction.
2. List the date the viatical settlement contract was purchased by the provider during the current calendar year, whether or not the insured is still alive at the end of the calendar year.
3. List the net amount (in dollars) being viaticated.
4. List the age (in years) of the person insured by the policy being viaticated, at the time of the viatical settlement contract.
5. List the life expectancy (in months) of the insured individual at the time of the viatical settlement contract.
6. List the net amount (in dollars) paid to the viator.
7. Identify whether the policy was an individual policy (I) or a group policy (G).
8. List the type of funding for the transaction: "F" for a licensed financial institution (policies collateralized), "P" for private (purchaser) funding, "I" for internal funding, "T" for trust, and "RPT" for related provider trust.
9. Indicate the purchase source of the policy. Use "B" for viatical settlement broker, "D" for direct from the viator, "I" for insurance agent/producer, "SM" for a secondary market or viatical settlement provider, "P" for private (purchaser) funding or "O" for other.
10. List the amount of commissions (in dollars) paid to viator source involved in the transaction whether that be a viatical settlement broker, an insurance producer or other licensed entity authorized to be viator source.
11. List the name of the source of the viatical settlement transaction. If it is a broker, producer or other licensee, name that person; if it is direct, from a relative, from the corporation of the insured or any other entity that could possibly reveal the insured, designate by writing "Direct," "Relative," "Corporation," or other nondesignating word.

## APPENDIX C

Calendar year

## Individual Mortality Report

Viatical Settlement Provider's  
Name

Nebraska Insureds Only

20

[illegible]

Completed by Viatical Settlement Providers

Initials of preparer: \_\_\_\_\_

VSP 002

## Individual Mortality Report—Nebraska Insureds Only Instructions

1. List the settlement number, case number, or unique identifying number used to identify the specific viatical settlement transaction.
2. List the date of the viatical settlement contract.
3. List the age of the insured at the time of the contract.
4. List the life expectancy (in months) of the insured individual at the time of the viatical settlement contract. For first to die policies, use the shortest life expectancy of the two lives. For second to die policies, use the longest life expectancy of the two lives.
5. List the "Net" amount paid to the viator.
6. Indicate the insured's date of death. For first to die policies, use the date of the first insured's death. For second to die policies, use the date of the last insured's death.
7. List the total amount of premiums (in dollars) required to be paid to the insurer to maintain the policy from the date of viatication to the date of death.
8. List the total death benefit collected from the insurer.
9. List the number of months between the date of contract and the insured's date of death.
10. List the number of months between the life expectancy of the insured at the time of contract and the insured's date of death. This should be noted as a plus (+) figure if the insured died after the estimated life expectancy or a minus (-) if the insured died prior to the estimated life expectancy.



## APPENDIX D

### Viatical Settlement Provider Certification Form

**This section should be completed by viatical settlement providers.**

Please check all forms submitted:

- ☐ Viatical Settlement Provider Reporting Form - Nebraska Viators Only (VSP 001)
- ☐ Individual Mortality Report - Nebraska Insureds Only (VSP 002)

I hereby certify that the information contained in the reports indicated above is true and accurate. I acknowledge that providing false and misleading information in the reports, or failing to divulge a fact material thereto, is sufficient grounds for administrative action by the commissioner and potentially, applicable criminal penalties.

\_\_\_\_\_  
Signature of individual that prepared reports

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Signature of Authorized Representative

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
Print or type name